IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPEAL NO. 2 OF 2002.

Manjeet s/o Surjit Singh,
presently lodged at
Central Jail, Aguada,
Sinquerim. ... Appellant.

Versus

State represented by
Officer-in-Charge
Calangute Police Station,
Calangute. ... Respondent.

Mr. Jos Peter D'Souza with Ms. C. Collasso, Advocates for the Appellant.

Mr. S.N. Sardessai, Public Prosecutor for the Respondent State.

Coram : P.V. HARDAS, J.

Date : 21st August 2003.

ORAL JUDGMENT.

The appellant/accused, who is convicted for an offence punishable under Section 20(b)(ii) of the N.D.P.S. Act and sentenced to undergo rigorous imprisonment for 10 years and to pay fine of Rs. 1 lakh, in default to undergo simple imprisonment for one year, has filed the present appeal challenging his conviction and sentence passed by the Special Judge, N.D.P.S. Court, Mapusa, by Judgment, dated 1st December 2001, in Special Criminal Case No. 7 of 2000.

2. The facts as are necessary for the decision of this appeal are set out hereunder:-

P.W.4 P.S.I. Gundu Naik was working as a Police Sub-Inspector of Calangute Police Station. On 3rd January 2000, at 9.30 p.m., he received a specific and reliable information that one person, aged 37 years, would be coming to Baga, at about 11.00 p.m., near a temple, to deliver a consignment of charas to a customer. The said information was reduced into writing and a copy thereof was sent to the S.D.P.O.. The said copy of information sent to P.W.5 Dy.S.P. Arvind Gawas, is at Exhibit P.W.4/D Colly. Thereafter, the presence of two panchas, namely, P.W.3 Caitan Albuquerque and one Devanand Gadekar was secured. The raiding party consisting of the two panchas, P.I. Goltekar, A.S.I. K.G. Dessai and other policemen proceeded in a jeep for the raid. After reaching Baga, the jeep was parked about 200 metres away from the temple. A.S.I. K.G. Dessai was carrying the kit box while P.W.4 P.S.I. Gundu was carrying the seal. At about 10.45 p.m., P.W.5 Dy.S.P. Arvind arrived at the place, where the jeep was parked, and joined the raiding party. After some time, a person, whose description matched with the description earlier received, arrived at the spot. The said person was, thereafter, surrounded, who has been identified as the appellant/accused in this case. P.W.4 P.S.I. Gundu identified himself and introduced the other members of the raiding party. The accused was asked his name and he disclosed his name as Manjeet Singh of Mohali. P.W.4

P.S.I. Gundu informed the accused that he had received reliable information that the accused had come to deliver a consignment of charas to his customers and, therefore, P.W.4 P.S.I. Gundu wanted to take his search for drugs. The appellant/accused was apprised about his right to be searched either before a Gazetted Officer or a Magistrate. The accused declined the said offer. The accused was then informed that he had a right to search the members of the raiding party including the panchas. The accused declined this offer also. During search, in the right hand side pant pocket, P.W.4 P.S.I. Gundu found one key and a polythene transparent bag containing cylindrical black substance. After observing the said substance P.W.4 P.S.I. Gundu stated that the substance was charas. The said substance on weighing was found to weigh 15 gms. alongwith the outer wrapper and the polythene bag. The said substance was packed, sealed and signed by the panchas, the accused and P.W.4 P.S.I. Gundu. Cash of Rs. 440/-, which was found in the shirt pocket, was also packed and sealed in the similar manner. The accused was, thereafter, asked to open the suitcase which he was carrying. On opening the suitcase a grey colour jacket was found and inside the grey coloured jacket small packets of transparent polythene bag containing black substances in cylindrical, round and rectangular shapes were found. There were in all 24 packets. On examining the said packets P.W.4 P.S.I.

Gundu stated that the substances were charas. The further search of the suitcase yielded a driving licence in the name of the accused, railway ticket, visiting cards, bus ticket and a reservation ticket.

3. The substance found in the suitcase was weighed and it was found to weigh 1.526 kgs. It was packed and sealed in the manner stated earlier. The other documents found in the suitcase were also packed and sealed in the similar manner. Since the accused did not have the necessary documents regarding the possession of the drugs, he was arrested after informing him the ground of arrest. A seizure report at Exhibit P.W.3/B was prepared and a copy of the same was delivered to the accused. A panchanama of the entire sequence of events was drawn and is at Exhibit P.W.3/A. A copy of the said panchanama was also delivered to the accused.

4. The property was handed over by P.W.4 P.S.I. Gundu to P.W.7 H.C. Sakharam Naik for safe custody. P.W.4 P.S.I. Gundu then lodged his complaint at Exhibit P.W.4/A. The property was deposited with the Police Inspector of the Calangute Police Station vide letter at Exhibit P.W.4/B. Intimation under Section 57 of the N.D.P.S. Act is at Exhibit P.W.4/C. The specimen seal letter, dated 5th January 2000, is at Exhibit P.W.1/B..

5. The property was entrusted to P.W.6 P.C. Ravindra Gawas for delivering the same to the Crime Branch, Panaji. P.W.6 P.C. Ravindra delivered the property to P.W.2 Manohar Joshi alongwith the covering letter at Exhibit P.W.2/A.. P.W.2 Manohar has acknowledged the receipt of the property by his acknowledgement given on the covering letter. As per the acknowledgement, he had received the property on 6th January 2000. P.W.2 Manohar forwarded the property for analysis on 10th January 2000 to the Director of Food and Drugs Administration, Panaji. The property was analysed by P.W.1 Mahesh Kaissare on 17th January 2000 and by his report at Exhibit P.W.1/C, he opined that the substance analysed by him contained charas.

6. After completion of the investigation a charge-sheet against the appellant/accused came to be filed. Vide Exhibit 4, a charge against the appellant/accused for an offence punishable under Section 20(b)(ii) of the N.D.P.S. Act was framed. The appellant/accused pleaded not guilty to the said charge and claimed to be tried. The prosecution in support of its case examined 7 witnesses. the learned trial Court accepted the evidence of the prosecution and convicted and sentenced the accused as aforestated. The defence of the appellant/accused is of false implication.

7. Mr. D'Souza, the learned counsel appearing for the appellant/accused, states that the prosecution has not led any evidence to show that the property that was seized from the possession of the accused was the very same property that was analysed by P.W.1 Mahesh. According to the learned counsel for the appellant/accused, there is no satisfactory evidence regarding the safe custody of the property. The learned counsel for the appellant/accused has next urged that there is total non-compliance of the proviso to Section 42 of the N.D.P.S. Act. The learned counsel for the appellant/accused has also urged that there is non-compliance of Section 50 of the N.D.P.S. Act.

8. Mr. Sardessai, the learned Public Prosecutor appearing for the respondent/State, has submitted that the evidence of P.W.4 P.S.I. Gundu, P.W.6 P.C. Ravindra and P.W.7 H.C. Sakharam clearly shows that there was no possibility of the seized drugs having been tampered with. He has also urged that there is compliance of the mandatory provisions of the N.D.P.S. Act.

9. The first submission of the learned counsel for the appellant/accused that there is no evidence regarding the safe custody of the property merits consideration. According to P.W.4 P.S.I. Gundu, after

the raid, he had deposited the property alongwith the covering letter at Exhibit P.W.4/B with the writer Head Constable for safe custody. One P.I. Goltekar had accompanied the raiding party. Though P.W.4 P.S.I. Gundu does not state who was the officer-in-charge of the police station, since P.I. Goltekar had accompanied the raiding party, it may safely be assumed that P.I. Goltekar was the officer-in-charge of the police station. P.W.7 H.C. Sakharam states that he was the writer Head Constable attached to Calangute Police Station. According to him, he was called by P.I. Banaulikar and P.I. Banaulikar had handed over 6 sealed envelopes, one suitcase and one parcel wrapped in brown paper. According to P.W.7 H.C. Sakharam, he had entered the property in the Register under No. 1/2000 and had kept the same under lock and key in his custody. According to him, on the next day P.S.I. Gundu gave him a letter to forward the sealed envelopes stated to be containing 15 gms. and 1.526 kgs. of charas. He further states that he gave these two sealed envelopes to P.W.6 P.C. Ravindra. He has identified the covering letter at Exhibit P.W.4/B of having received the property on 4th February 2000. In the cross-examination P.W.7 Sakharam has admitted that the writing in the register to the effect "The property at S. No. 1 & 3 handed over to PC 4172 to hand over to Sc. Asst. CID, CB Panaji", is in his handwriting. He has also admitted

that the register does not show the date against the entry when he had handed over the two sealed envelopes stated to have been containing charas, though he has admitted that there is a date put beneath the signature of P.W.6 P.C. Ravindra. He has further admitted that he will not be in a position to say on which day he had handed over the two sealed envelopes stated to have been containing charas to P.W.6 P.C. Ravindra. According to P.W.7 H.C. Sakharam, he had handed over the two sealed envelopes to P.W.6 P.C. Ravindra on 6th January 2000.

10. P.W.6 P.C. Ravindra in his evidence has stated that, on 6th January 2000, he had received two sealed envelopes from P.W.7 H.C. Sakharam and had handed over the said envelopes on the same day to P.W.2 Manohar. P.W.4 P.S.I. Gundu in his cross-examination has admitted that a muddemal register is maintained by the police station. The entry in the said register is in the handwriting of writer Head Constable (P.W.7 Sakharam). He has further admitted that there is an entry, at Serial Number 1/2000, where all the details are mentioned. He has further admitted in the cross-examination "as per the said entry, it shows that two sealed envelopes containing the purported drugs were handed over to CID Crime Branch Panaji on the same day i.e. 4.1.2000. The said entry shows the initial of one constable who had carried the said alleged drugs in the

sealed packet to CID Crime Branch Panaji. I now say that it was PC-4172" (P.W.6 P.C. Ravindra).

11. During the course of hearing the original muddemal register was called for. A xerox copy of the entry No. 1/2000 is placed on record and marked 'X'. As admitted by P.W.4 P.S.I. Gundu there is an entry about the property at Serial Nos. 1 and 3 being handed over to P.C. 4172, that is, P.W.6 P.C. Ravindra. Beneath the signature of P.W.6 P.C. Ravindra, the date is put as 4.1.2000.

12. Thus, from the evidence tendered by the prosecution on this aspect, it is clear that there is no satisfactory evidence in respect of the safe keeping of the property. According to P.W.4 P.S.I. Gundu, he had deposited the property with P.W.7 H.C. Sakharam. The evidence of P.W.7 H.C. Sakharam is that the property was handed over to him by P.I. Banaulikar. The prosecution has not attempted to explain as to how the seized property came into the possession of P.I. Banaulikar. There is no evidence that P.I. Banaulikar, at the relevant time, was the Police Inspector of Calangute Police Station. In fact, the evidence on record suggests that one P.I. Goltekar had accompanied the raiding party. He had obviously accompanied the raiding party in his capacity as Police Inspector of

Calangute Police Station. That apart, the entry in the muddemal register shows that the property was handed over to P.W.6 P.C. Ravindra on 4th January 2000. According to P.W.6 P.C. Ravindra, he had received the property on 6th January 2000 and had delivered the same to the CID Office on 6th January 2000. If P.W.6 P.C. Ravindra was in possession of the property on 4th January 2000, there is no satisfactory evidence regarding the safe custody of the property from 4th January to 6th January 2000, when it was delivered to the CID Office. The evidence tendered by the prosecution falls woefully short of it being convincing evidence regarding the safe custody of the property. Mere tallying of the seals by P.W.1 Mahesh does not obviate the responsibility of the prosecution to prove that the property was in safe custody from the time of its seizure till the property was sent for analysis. Thus, the evidence of the prosecution does not rule out the possibility of the samples being tampered with. In view of this matter, therefore, according to me, the conviction is wholly unsustainable. The appeal, therefore, deserves to be allowed. Since the appeal is being allowed on the first submission made by the learned counsel for the appellant/accused, the other submissions regarding non-compliance of Section 50 and proviso to Section 42 of N.D.P.S. Act are not being dealt with.

13. In the result, therefore, the Criminal Appeal is allowed. The conviction and sentence of the appellant/accused for an offence punishable under Section 20(b)(ii) of the N.D.P.S. Act, passed by the Special Judge, N.D.P.S. Court, Mapusa, by Judgment, dated 1st December 2001, in Special Criminal Case No. 7 of 2000, is, hereby, quashed and set aside and the appellant is acquitted of the offence for which he was charged and convicted. The appellant/accused be set at liberty forthwith, if not wanted in any other case. Fine, if paid, be refunded to the appellant.

(P.V. HARDAS)
JUDGE.

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